

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Otis M. Kelly, Jr.,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:11cv254
vs.	:	
	:	Chief Judge Susan J. Dlott
Warden, London Correctional Institute,	:	
	:	
Respondent(s).	:	

JUDGMENT IN A CIVIL CASE

Decision by Court: This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED. . . .

Respondent's motion to dismiss (Doc. 17) is **GRANTED** and petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 (Doc. 4) is **DISMISSED** with prejudice on the ground that the single ground raised in the petition is not cognizable in federal habeas corpus.

A certificate of appealability will not issue with respect to the claim alleged in the petition, which have been addressed on the merits herein, because petitioner has not stated a "viable claim of the denial of a constitutional right," nor are the issues presented "adequate to deserve encouragement to proceed further." *See Slack v. McDaniel*, 529 U.S. 473, 475 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). *See also* 28 U.S.C. §2253 (c); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. §1915(a)(3) that an appeal of any Order adopting the Report and Recommendation will not be taken in "good faith," and therefore **DENY** petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

7/16/12

JAMES BONINI, CLERK

S/William Miller
Deputy Clerk